

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NEW YORK

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BLACK LOVE RESISTS IN THE RUST, et al., :  
: Plaintiffs, :  
: :  
: v. : Case No. 1:18-cv-00719  
: :  
CITY OF BUFFALO, N.Y., et al., : Defendants.  
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**DECLARATION OF DARIUS CHARNEY IN RESPONSE TO THE ERIE COUNTY  
DISTRICT ATTORNEY'S OFFICE MOTION TO QUASH  
PLAINTIFFS' SUBPOENA DUCES TECUM**

I, Darius Charney, declare the following under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am a Senior Staff Attorney at the Center for Constitutional Rights (CCR).
2. I am one of the attorneys representing Plaintiffs and the proposed classes in this action, and I am fully familiar with the facts stated in this declaration.
3. I am an attorney admitted to practice in the Western District of New York.
4. I submit this declaration in response to the Erie County District Attorney's Office June 11, 2021 Motion to Quash the Subpoena Duces Tecum that Plaintiffs served it with on May 26, 2021 (ECF No. 99).
5. A copy of the subpoena is attached hereto.
6. On May 27, June 18 and June 24, 2021, I conferred by telephone with Assistant District Attorney Michael Hillery of the Erie County District Attorney's Office about Plaintiffs' subpoena.

7. As a result of these conferrals, Mr. Hillery agreed to produce and did produce certain documents and information responsive to some of the requests contained in Schedule A of the subpoena.

8. Specifically, on June 24, 2021, Mr. Hillery produced to me via electronic mail the file numbers of all Buffalo Police Department (BPD) Internal Affairs Division (IAD) case files in its possession concerning BPD officers Joseph Hassett and Richard Hy, as well as a copy of a recent Erie County Supreme Court decision concerning the testimonial credibility of Officer Hy, which are responsive to the Third Request in Plaintiffs' subpoena.

9. On June 25, 2021, Mr. Hillery produced to me via electronic mail a copy of an April 2019 letter from the Erie County District Attorney to Defendant BPD Commissioner Byron Lockwood regarding the testimonial credibility of Officer Hassett, which is responsive to the Second and Fourth Requests in Plaintiffs' subpoena.

10. In addition, during our conferrals, Mr. Hillery confirmed that the Erie County District Attorney's Office is not in possession of any IAD files or court decisions concerning BPD Officer Thomas Zak or any other documents responsive to the Fourth Request in Plaintiffs' subpoena.

11. Plaintiffs now intend to seek production from Defendants of the IAD case files identified in Mr. Hillery's June 24 email, which are responsive to Requests # 97 and 100 in Plaintiffs' 5<sup>th</sup> Set of Requests for Production that were served on Defendants on November 10, 2020 and discussed at the parties' May 11, 2021 conference with the Court. *See 5/11/2011 Hrg Tr. at 32-37.*

12. Accordingly, Plaintiffs wish to withdraw their subpoena duces tecum to the Erie County District Attorney's Office without prejudice to renew it if and when it is determined that Defendants have destroyed or are unable to locate the aforementioned IAD files.

Dated: New York, NY  
June 25, 2021

\s\ Darius Charney  
Darius Charney